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 CALIFORNIA RESTAURANT ASSOCIATION

ORIGINAL FILED

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RICHARD W. WIEKING
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

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CW

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

17 CALIFORNIA RESTAURANT
 18 ASSOCIATION,

) Case No. _____

19 Plaintiff,

) COMPLAINT

20 v.

21 THE CITY AND COUNTY OF SAN
 22 FRANCISCO and THE SAN FRANCISCO
 DEPARTMENT OF PUBLIC HEALTH,

23 Defendants.

CV 08 3247

PRELIMINARY STATEMENT

1 1. The California Restaurant Association (“CRA”) seeks declaratory and injunctive
2 relief to prevent enforcement by the San Francisco Department of Public Health (the “Department”)
3 of a newly promulgated ordinance, Ordinance 40-08, which amends San Francisco Health Code
4 §§ 468-468.8. Ordinance 40-08 dictates how selected San Francisco restaurants must communicate
5 nutrition information to their customers. Ordinance 40-08 applies only to restaurants in the City
6 and County of San Francisco that have at least twenty establishments doing business in California.
7 For these restaurants, Ordinance 40-08 requires that select parts of nutrition information (calories on
8 menu boards or calories together with saturated fat, carbohydrates and sodium on menus) be
9 displayed in a precisely prescribed manner on menus and menu boards. But the Nutrition Labeling
10 and Education Act of 1990, 21 U.S.C. §§ 301, 343, 343-1 (“NLEA”), and regulations promulgated
11 thereunder by the federal Food and Drug Administration (“FDA”), expressly preempt laws like
12 Ordinance 40-08, in which a state or subdivision of a state “directly or indirectly” establishes any
13 requirements respecting health or nutrient claims that are “not identical to” the requirements of
14 federal law. Ordinance 40-08 also infringes on the speech rights, guaranteed by both the First
15 Amendment of the United States Constitution and Article I, Section 2 of the California Constitution,
16 of those restaurants that come within its purview, impermissibly compelling government-directed
17 speech. And Ordinance 40-08 is even preempted by California state law because the California
18 Retail Food Code, Cal. Health & Safety Code § 113703 *et seq.* (“CRFC”), fully occupies the field
19 of “health and sanitation standards for retail food facilities . . .”

20 2. Through congressional legislation and FDA regulatory action, the federal
21 government has made a determination that the effective communication by restaurants of nutrition
22 information to consumers is a complex subject requiring flexibility; that there is no one “right way”
23 to communicate this information; that restaurants should be permitted and encouraged to try
24 different ways of doing so; and that they should not be burdened by specific requirements that
25 would hinder experimentation.

26 3. Defendants’ regime takes a directly contrary approach. For selected restaurants,
27 Defendants wish to require that information about calories, saturated fat, carbohydrates and sodium

1 be communicated in a particular and inflexible manner to customers. A restaurant subject to
2 Ordinance 40-08 must post the nutrition information of each menu item at a particular spot in the
3 restaurant. For items on menu boards, these restaurants must disclose calorie information in a size
4 and typeface as prominent as the menu item's name or price. S.F. Health Code § 468.3(c). On
5 menus, these restaurants must disclose calories, saturated fat, carbohydrates and sodium in a "clear
6 and conspicuous" size and typeface near the menu item. *Id.* § 468.3(b). Failure to make these
7 disclosures subjects restaurants to governmental sanction. *Id.* § 468.6. Federal law imposes no
8 such requirements. Ordinance 40-08 is thus "not identical to" the regulations promulgated under
9 the NLEA and, in fact, contravenes the federal regulatory scheme. Thus, Ordinance 40-08 is
10 expressly preempted and unenforceable under the Supremacy Clause of the United States
11 Constitution.

12 4. Defendants' inflexible regime also impermissibly burdens CRA members' First
13 Amendment rights. Ordinance 40-08 requires restaurants to publish Defendants' health message; it
14 forces the restaurants to do so as if the message were the restaurants' own message; and it forces the
15 restaurants to communicate in a way that is incomplete and misleading.

16 5. To protect CRA members' First Amendment rights, and to prevent the Defendants
17 from imposing a regime preempted by the NLEA and regulations promulgated thereunder, Plaintiff
18 CRA seeks a declaration that Ordinance 40-08 is invalid, and an injunction barring Defendants from
19 enforcing it.

20 **JURISDICTION**

21 6. Because this action arises under the Constitution and laws of the United States, this
22 Court has jurisdiction under 28 U.S.C. § 1331.

23 7. This Court has supplemental jurisdiction over Plaintiff's claims arising under the
24 California Constitution and the CRFC pursuant to 28 U.S.C. § 1337.

25 8. This Court also has jurisdiction under 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1983
26 to redress deprivations under color of any state law, statute, custom or usage, of any right, privilege
27 or immunity secured by the Constitution of the United States.
28

9. Venue in this District is proper pursuant to 28 U.S.C. § 1391(b)(1) and (b)(3) because Defendants reside within the State of California and within this judicial district. Venue is also proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District.

PARTIES

10. Plaintiff, the California Restaurant Association, is a non-profit trade association representing the California restaurant and food service industry. The Association has over 22,000 members, with over 500 members operating restaurants within the City and County of San Francisco. Certain of these CRA members maintain at least twenty establishments in California, and therefore will be subject to Ordinance 40-08 if it is not enjoined.

11. Defendant the City and County of San Francisco (“San Francisco”) is a public entity constituted under the Constitution and the laws of the State of California. Under Article I of the City and County of San Francisco Charter, San Francisco makes and enforces all ordinances and regulations with respect to municipal affairs. San Francisco is responsible for enacting Ordinance

12. Defendant San Francisco Department of Public Health is the department responsible for developing and enforcing health policy in the City and County of San Francisco. The Department will be responsible for enforcement of Ordinance 40-08 if it is allowed to take effect. *See S.F. Health Code § 468.6(f).*

BACKGROUND

13. Under the NLEA, restaurants are generally exempted from the mandatory labeling requirements that apply to packaged foods. Restaurants making health and nutrient content claims, however, are required under the NLEA to comply with FDA regulations governing the provision of such information. 21 U.S.C. § 343(r)(2)(A).

14. Based on studies conducted by the FDA and others, the FDA concluded that it was premature to draw firm conclusions about the effectiveness, if any, of any particular method of communicating nutrient information in restaurants, and that restaurants should be given leeway and encouragement to experiment with providing health and nutrient content claims in different formats

1 Thus, FDA regulations expressly grant restaurants broad discretion in choosing a format for the
2 presentation of whatever nutrition information they provide. 21 C.F.R. § 101.10. Specifically,
3 section 101.10 of the FDA's regulations allows restaurants to present nutrition information "in
4 various forms, including those provided in § 101.45 [allowing a wide range of formats, including
5 signs, charts, brochures, posters, leaflets, videos and other media] *and other reasonable means.*"
6 (Emphasis supplied.)

7 15. This flexibility is essential to the FDA's regulatory scheme, which seeks to secure
8 the availability of accurate and complete information about the nutritional content of restaurant food
9 without making the requirements for disclosure unnecessarily onerous.

10 16. In accordance with the discretion granted under the NLEA and accompanying
11 regulations, some CRA members have elected to provide nutritional information to their customers
12 using a variety of formats, including in-store brochures, websites, in-store posters, toll free
13 numbers, tray liners and food packaging.

14 17. Such restaurants have sought to give customers access to complete nutrient
15 information in a user-friendly format that emphasizes the importance of a well-balanced diet and a
16 healthy lifestyle. Consistent with the prevailing view among public health experts that obesity is
17 the result of several factors acting together over time, and that proper consumer education is
18 essential, these restaurants have avoided overemphasizing the importance of any one nutrient—such
19 as calories, fat or carbohydrates—to an overall, well-balanced diet, and have focused instead on
20 providing consumers with a balanced presentation of all relevant nutrition information, including
21 fat, sodium, calories, carbohydrates, cholesterol, protein, vitamins and minerals.

22 18. On March 24, 2008, San Francisco enacted Ordinance 40-08, which requires all
23 restaurants with at least twenty establishments in California to post certain nutrition information for
24 each menu item on menus, menu boards and food tags. Ordinance 40-08 is scheduled to take effect
25 on September 20, 2008.

26 19. Ordinance 40-08 dictates the manner, size and typeface that the restaurant must use
27 to present certain nutrient content claims of an item. On menu boards and food tags, Ordinance 40-
28 08 mandates that covered restaurants post the "total number of calories ... next to or beneath each

1 Menu Item ... using a font and format ... at least as prominent, in size and appearance, as that used
2 to post either the name or price of the Menu Item." S.F. Health Code § 468.3(c). On their menus,
3 covered restaurants must post the total number of calories, total number of grams of saturated fat,
4 total number of grams of carbohydrates and total number of milligrams of sodium "next to or
5 beneath each Menu Item using a size and typeface that is clear and conspicuous." S.F. Health Code
6 § 468.3(b). The law further requires that these restaurants state on their menus, "Recommended
7 limits for a 2,000 calorie daily diet are 20 grams of saturated fat and 2,300 milligrams of sodium."
8 *Id.* § 468.3(b)(2).

9 20. Ordinance 40-08 thus isolates on menus and menu boards certain nutrition content
10 from the body of nutrition information set forth in the FDA-created "Nutrition Facts" panel format
11 found on packaged foods. In contrast to Ordinance 40-08, the "Nutrition Facts" panel provides the
12 full range of information the FDA has determined consumers require to make informed dietary
13 choices, including calories from fat, fat, trans fat, cholesterol, dietary fiber, sugars, protein, and
14 vitamin and mineral content of a given menu item. Ordinance 40-08 severely limits restaurants'
15 freedom in communicating nutrition information to their customers. By forcing restaurants to make
16 nutrient content claims only on select information, Ordinance 40-08 compels restaurants to convey
17 a nutrition message on their menu and menu boards that the restaurants believe is incomplete,
18 misleading, and with which they do not agree: namely, that information on these select nutrients is
19 the only relevant nutrition criterion to consider when making food selections.

20 21. Limiting the nutrient information—on menu boards to calories and on menus to
21 calories, saturated fat, carbohydrates and sodium—as a guideline to the healthfulness of a particular
22 food, is misleading. Some higher calorie foods, for example, have more nutritional value than some
23 lower calorie foods.

24 22. By imposing a rigid regime governing how restaurants must communicate nutritional
25 information to customers, Ordinance 40-08 contravenes the approach taken by Congress, the FDA,
26 and prevailing public health opinion.

27 23. Ordinance 40-08 also imposes significant economic injury on the restaurants it
28 governs. CRA members will incur added costs in complying with Ordinance 40-08. Addition of

1 nutrition information will increase the amount of text on the menus and menu boards. In order to fit
2 the new information, the font size of the item name and price in all likelihood would have to be
3 reduced, making menus and menu boards more cluttered and harder to read.

4 **FIRST CAUSE OF ACTION**

5 (Federal Preemption)

6 24. Plaintiff realleges each and every allegation contained above.

7 25. The Supremacy Clause (Article VI) of the United States Constitution states that the
8 “Laws of the United States which shall be made in Pursuance [of the Constitution] . . . shall be
9 the supreme Law of the Land . . .” When there is a conflict between a state law and federal
10 law, the federal law preempts the state law.

11 26. The NLEA provides that any food labeling requirement imposed by a state or
12 political subdivision of a state that is “not identical to” the requirement contained in the statute is
13 preempted. 21 U.S.C. § 343-1(a)(5). Specifically, the NLEA states: “no State or political
14 subdivision of a State may directly or indirectly establish under any authority or continue in effect
15 as to any food in interstate commerce any requirement respecting any claim of the type described in
16 section 343(r)(1) of this title [*i.e.*, nutrition claims] made in the label or labeling of food that is not
17 identical to the requirement of section 343(r) of this title, except a requirement respecting a claim
18 made in the label or labeling of food which is exempt under [a section of the statute dealing with
19 claims concerning cholesterol, saturated fat, dietary fiber and nutrients that increase the risk of
20 disease, not relevant here].” *Id.*

21 27. The labeling requirements contained in Ordinance 40-08 are “not identical to” the
22 requirements in the NLEA. Ordinance 40-08 isolates certain nutrition information from all other
23 nutrient content claims, requires that it be posted in particular spots at the restaurant (the menu, food
24 tags or menu board), and dictates that it be presented in a certain size and appearance (including
25 font and format). The NLEA does not contain any of these requirements. Therefore, Ordinance 40-
26 08 is “not identical to” the requirements in the NLEA and is preempted.

28. As a nutrient labeling requirement inconsistent with both the language and purpose of the NLEA and its regulations, Ordinance 40-08 is preempted under the Supremacy Clause of the United States Constitution.

SECOND CAUSE OF ACTION

(State Preemption)

29. Plaintiff realleges each and every allegation contained above.

30. Article XI, Section 7 of the California Constitution provides that “[a] county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws.” When there is a conflict between a local law and state law, the state law preempts the local law.

31. The California Retail Food Code (“CRFC”), Cal. Health & Safety Code § 113703 *et seq.*, regulates the retail sale of food, including food served at restaurants, on a statewide basis. The CRFC provides that, “[e]xcept as provided in Section 113709 [not relevant here], it is the intent of the Legislature to occupy the whole field of health and sanitation standards for retail food facilities, and the standards set forth in this part and regulations adopted pursuant to this part shall be exclusive of all local health and sanitation standards relating to retail food facilities.” Cal. Health & Safety Code § 113705.

32. Under the CRFC, pre-packaged foods must meet labeling requirements, including nutrition labeling requirements specified under the NLEA. Cal. Health & Safety Code § 114089(a), (b)(5). In addition, the CRFC contains labeling requirements for bulk foods. The CRFC does not specifically require nutrition labeling of foods prepared and served at restaurants. By contrast, Ordinance 40-08 requires that certain nutrition information be posted in particular spots at the restaurant (the menu, food tags or menu board) and dictates that it be presented in a certain size and appearance (including font and format).

33. The requirements of Ordinance 40-08 fall within the CRFC's fully occupied field of "health and sanitation standards for retail food facilities . . ." Thus, Ordinance 40-08 conflicts with the CRFC.

34. As a nutrient labeling requirement that conflicts with the CRFC, Ordinance 40-08 is preempted under the California Constitution.

THIRD CAUSE OF ACTION

(First Amendment)

35. Plaintiff realleges each and every allegation contained above.

36. The First Amendment of the United States Constitution provides: "Congress shall make no law . . . abridging the freedom of speech . . ." In protecting the autonomy of every speaker to choose the content of his message, the First Amendment—applied to the states by incorporation into the Fourteenth Amendment—guarantees the right to speak, the right not to speak, and the right to choose the content on one's message. The commercial nature of speech does not deprive it of these guarantees.

37. By requiring restaurants to make certain nutrient content claims on their menus and menu boards, Ordinance 40-08 compels restaurants to convey Defendants' health message; to express the message as if it were the restaurants' own; and to deliver a message with which many restaurants disagree: namely, that information about calories and a few other nutrients is the only relevant nutrition criterion to consider when making food selections.

38. Defendants are unable to demonstrate that Ordinance 40-08 will advance their asserted interest in reducing the incidence of obesity in the City and County of San Francisco. Absent this demonstration, San Francisco's substantial infringement of member restaurants' constitutional rights is impermissible.

39. In addition, Ordinance 40-08 is not narrowly enough drawn.

40. Accordingly, Ordinance 40-08 violates member restaurants' rights to freedom of speech guaranteed by the First Amendment to the United States Constitution, as incorporated by the Fourteenth Amendment.

41. Plaintiff has no remedy at law for such deprivation of its members' rights.

FOURTH CAUSE OF ACTION

(Article I, Section 2 of the California Constitution)

42. Plaintiff realleges each and every allegation contained above.

43. Article I, Section 2 of the California Constitution provides: "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." The California Constitution guarantees the right to speak, the right not to speak, and the right to choose the content on one's message. The commercial nature of speech does not deprive it of these guarantees.

44. By requiring restaurants to make certain nutrient content claims on their menus and menu boards, Ordinance 40-08 compels restaurants to convey Defendants' health message; to express the message as if it were the restaurants' own; and to deliver a message with which many restaurants disagree: namely, that information about calories and a few other nutrients is the only relevant nutrition criterion to consider when making food selections.

45. Defendants are unable to demonstrate that Ordinance 40-08 will advance their asserted interest in reducing the incidence of obesity in the City and County of San Francisco. Absent this demonstration, San Francisco's substantial infringement of member restaurants' state constitutional rights is impermissible.

46. In addition, Ordinance 40-08 is not narrowly enough drawn.

47. Accordingly, Ordinance 40-08 violates member restaurants' rights to freedom of speech guaranteed by Article I, Section 2 of the California Constitution.

48. Plaintiff has no remedy at law for such deprivation of its members' rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff CRA demands judgment against Defendants on each and every cause of action:

1. Declaring that Ordinance 40-08, being inconsistent with federal labeling laws, is preempted under the Supremacy Clause of the United States Constitution and, therefore, of no force;

2. Declaring that Ordinance 40-08 is preempted by California Retail Food Code and, therefore, of no force;

1 3. Declaring that Ordinance 40-08 denies Plaintiff's member restaurants the right to
2 freedom of speech and thereby violates the First Amendment to the United States Constitution, as
3 incorporated by the Fourteenth Amendment;

4 4. Declaring that Ordinance 40-08 denies Plaintiff's member restaurants the right to
5 freedom of speech guaranteed by Article I, Section 2 of the California Constitution;

6 5. Preliminarily and permanently enjoining the Defendants from enforcing Ordinance
7 40-08;

8 6. Awarding Plaintiff damages to be proved at trial pursuant to 42 U.S.C. § 1983, and
9 its costs and expenses, including reasonable attorneys' fees as permitted by 42 U.S.C. § 1988,
10 necessarily incurred in connection with this action; and

11 7. Granting such other and further relief as this Court may deem just and proper.

13 Dated: July 3, 2008

14 ARNOLD & PORTER LLP

15
16 By: Trenton H. Norris/se
17 Trenton H. Norris
18 Attorneys for Plaintiff
CALIFORNIA RESTAURANT
ASSOCIATION

JS 44 (Rev. 12/07) (cand rev 1-16-08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

CALIFORNIA RESTAURANT ASSOCIATION

DEFENDANTS

THE CITY AND COUNTY OF SAN FRANCISCO and THE SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH

(b) County of Residence of First Listed Plaintiff SACRAMENTO
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant SAN FRANCISCO
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Arnold & Porter LLP
90 New Montgomery Street, Suite 600
San Francisco, CA 94105
(415) 356-3000Attorneys (If Known)
Francesca Gessner & Tara Steeley
Deputy City Attorneys**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

- | | |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) |

PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	PROPERTY RIGHTS	400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Commerce	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 520 Copyrights	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury	SOCIAL SECURITY	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract			<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	Habeas Corpus:	FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights		
	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

V. ORIGIN (Place an "X" in One Box Only)

- | | | | | | | |
|---|---|--|---|---|---|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Judge from Magistrate Judgment |
|---|---|--|---|---|---|---|

Transferred from

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983; the First and Fourteenth Amendments

Brief description of cause:

Action for declaratory judgment that local ordinance is unconstitutional.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)
(PLACE AND "X" IN ONE BOX ONLY)** SAN FRANCISCO/OAKLAND SAN JOSE

DATE July 3 , 2008

SIGNATURE OF ATTORNEY OF RECORD

Trenton H. Norris

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. **(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.